

IN THE CONSUMER AFFAIRS COURT FOR THE PROVINCE OF FREE STATE
HELD IN BLOEMFONTEIN

CASE NO: FSCAC2020/12-4

In the matter between:

SUZAN MODIEHI THINANE

PLAINTIFF

And

WANT A CAR CC t/a L & S TUNING

DEFENDANT

JUDGEMENT

DELIVERED ON 01/10/2021

1.

The Plaintiff in this matter issued summonses against the Defendant for the refund of the money paid by the Plaintiff to the Defendant for repairs to her motor vehicle, a Land Rover Freelander in December 2016. The amount was paid in two instalments of R8000, the first instalment was made in December 2016 and the second R8000 was paid on 18 March 2017. The second prayer is that the Defendant should return the motor vehicle given to the Defendant for repairs by Plaintiff being a Land Rover Freelander 2.0 ack to the Plaintiff.

2.

The particulars of claim indicate that the Plaintiff had taken her vehicle to the Defendant for repairs in December 2016. According to the Plaintiff, the Defendant failed to fix the vehicle in accordance with the agreement. Plaintiff then approached the office of the Consumer Protector on 17 November 2017.

3.

The summonses in this matter were issued by the office of the Consumer Protector on the 13th of November 2020 and served on the Defendant on the 17th of November 2020. The matter first appeared before us on the 12th of February 2021. The Plaintiff was represented by Mr Esterhuysen whilst the Plaintiff appeared with her husband, and presented by the office of the Consumer Protector.

4.

Mr Esterhuysen raised a special plea of prescription. He alleged that the complaint that was raised by the Plaintiff arose in December 2016 and the summonses were only issued in November 2020. Before dealing with the merits of the matter the court first dealt with the special plea.

5.

Prescription in Consumer matters is regulated by Section 116 of the Consumer Protection Act 68 of 2008. This section states that;

“a complaint in terms of this act may not be referred or made to the Tribunal or to a Consumer Court more than three years after :

(a) The act or omission that is the cause of the complaint; or

(b) In the case of a course of conduct or continuing practice, the date that the conduct or practice ceased”.

6.

This has to be read together with Section 18(1) of the Free State Consumer Affairs Act 14 of 1998, which provides as follows;

“proceedings before a court shall, except in cases contemplated in section 12 and 20, be initiated by summons in the prescribed form which shall be served on the person concerned in the prescribed manner, which may include service outside the Province”.

7.

The provincial Free State Consumer Affairs Act 14 of 1998, clearly states that a complaint should be referred to the Consumer Court by way of summons. In this matter the summons was only issued on 11 November 2020, which was after three years had elapsed.

8.

According to the Plaintiff before us the cause of complaint arose in December 2016. Because the summons was issued on 11 November 2020 it can be accepted that the matter was then referred to the Consumer Court in November 2020.

9.

The members of the Consumer Court deliberated on the matter as to whether the complaint has prescribed or not, in particular whether referral to the office of the consumer protector means referral the court.

10.

After deliberations the members of the Consumer Court unanimously concluded that it did not. If the legislature had intended that the referral to the consumer office would also mean referral to the court they would have indicated so, and they have not. Further the Provincial Act clearly states that the complaint shall be initiated by way of summons. The summons presented to the court were only issued on the 11th November 2020 and served on the Defendant on the 17th November 2020.

11.

Having considered the above facts, it is not necessary to go into the merits of the case as the special plea should succeed.

JUDGEMENT

The Consumer Court then concluded that the matter has prescribed. Thus the complaint by the Plaintiff is dismissed on the basis that it has prescribed.

Members of the Consumer Court present;

Adv NM Bahlekazi

Chairperson

Professor Rita Jansen

Member

Mr C J Bredenkamp

Member

Mr A Sefo

Member

Me D N Moeti

Member



[Handwritten signatures of the court members]